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August 5, 2010

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VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

ENTERED
Office of Proceedings

AUG 6 - 2010

Part of
Public Record



Re: **Finance Docket No. 34624**
R. J. Corman Railroad Company/Central Kentucky Lines, LLC --
Lease Exemption -- Line of R.J. Corman Railroad Property, LLC

Finance Docket No. 34625
R. J. Corman Railroad Property, LLC -- Lease Exemption --
Line of CSX Transportation, Inc.

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition of R.J. Corman Railroad Company/Central Kentucky Lines, LLC and R.J. Corman Railroad Property, LLC to Reopen and Modify Notices of Exemption**, dated August 5, 2010. A check in the amount of \$250, representing the appropriate fee for this filing, and a computer disk containing the text of the Petition in MS Word 2003 format are attached.

One extra copy of the Petition and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for R.J. Corman Railroad Company/
Central Kentucky Lines, LLC and R.J. Corman
Railroad Property, LLC

TJL:tl

Enclosures

cc: Louis E. Gitomer, Esq.

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34624



R.J. CORMAN RAILROAD COMPANY/CENTRAL KENTUCKY LINES, LLC
-- LEASE EXEMPTION --
LINE OF R.J. CORMAN RAILROAD PROPERTY, LLC

FINANCE DOCKET NO. 34625

R.J. CORMAN RAILROAD PROPERTY, LLC
-- LEASE EXEMPTION --
LINE OF CSX TRANSPORTATION, INC.

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**PETITION OF R.J. CORMAN RAILROAD COMPANY/CENTRAL KENTUCKY
LINES, LLC AND R.J. CORMAN RAILROAD PROPERTY, LLC
TO REOPEN AND MODIFY NOTICES OF EXEMPTION**

FILED
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**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED

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**SURFACE
TRANSPORTATION BOARD**

Thomas J. Litwiler
Michael J. Barron, Jr.
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**ATTORNEYS FOR R.J. CORMAN RAILROAD
COMPANY/CENTRAL KENTUCKY LINES, LLC
AND R.J. CORMAN RAILROAD PROPERTY, LLC**

Dated: August 5, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34624

R.J. CORMAN RAILROAD COMPANY/CENTRAL KENTUCKY LINES, LLC
-- LEASE EXEMPTION --
LINE OF R.J. CORMAN RAILROAD PROPERTY, LLC

FINANCE DOCKET NO. 34625

R.J. CORMAN RAILROAD PROPERTY, LLC
-- LEASE EXEMPTION --
LINE OF CSX TRANSPORTATION, INC.



**PETITION OF R.J. CORMAN RAILROAD COMPANY/CENTRAL KENTUCKY
LINES, LLC AND R.J. CORMAN RAILROAD PROPERTY, LLC
TO REOPEN AND MODIFY NOTICES OF EXEMPTION**

R.J. Corman Railroad Company/Central Kentucky Lines, LLC ("RJCC") and R.J. Corman Railroad Property, LLC ("Railroad Property") hereby seek to reopen these proceedings and have the Board modify the notices of exemption served in Finance Docket No. 34624 on February 23, 2005 and in Finance Docket No. 34625 on March 4, 2005 to clarify the process by which RJCC obtained incidental trackage rights over a CSX Transportation, Inc. ("CSXT") line in connection with the lease transactions that are the subject of these dockets. RJCC received those incidental rights directly from CSXT, rather than via assignment from Railroad Property as was indicated in 2005 RJCC and Railroad Property notices of exemption. This technical aspect of the transaction did not change the scope, nature or purpose of the trackage rights that RJCC represented it would acquire. Nonetheless, RJCC and Railroad Property desire that the record in these proceedings accurately reflect how those rights were conveyed to RJCC.

RJCC is a Class III rail carrier that has leased and operated rail lines in the Commonwealth of Kentucky since 2003. Railroad Property is a Class III rail carrier that holds rail lines operated by other R.J. Corman affiliates. RJCC and Railroad Property are controlled by Richard J. Corman, who also controls several other Class III rail carriers in the eastern United States. See Richard J. Corman -- Continuance in Control Exemption -- R.J. Corman Railroad Company/Central Kentucky Lines, Finance Docket No. 34327 (STB served April 14, 2003).

In 2005, RJCC, Railroad Property and CSXT entered into a transaction involving CSXT's so-called "Water Street Lead" in Louisville, Kentucky. Railroad Property leased the Water Street Lead from CSXT, and then sub-leased the line to RJCC, with both transactions exempted from 49 U.S.C. § 10902 pursuant to 49 C.F.R. § 1150.41.¹ See R.J. Corman Railroad Property, LLC -- Lease Exemption -- Line of CSX Transportation, Inc., Finance Docket No. 34625 (STB served March 4, 2005) ("Railroad Property Lease"); R.J. Corman Railroad Company/Central Kentucky Lines, LLC -- Lease Exemption -- Line of R.J. Corman Railroad Property, LLC, Finance Docket No. 34624 (STB served February 23, 2005) ("RJCC Sublease").

As part of the lease transaction, Railroad Property also was to obtain incidental trackage rights over CSXT's line between the Water Street Lead in Louisville and HK Tower in Anchorage, Kentucky (the "Anchorage Trackage Rights"). Railroad Property would then, in turn, assign those trackage rights to RJCC. Both the notices of exemption filed by Railroad Property and RJCC under 49 U.S.C. § 10902 in Finance Docket Nos. 34625 and 34624 and the notices published by the Board in those dockets reflected this two-step method of conveying the Anchorage Trackage Rights from CSXT to RJCC. Railroad Property Lease at 2; RJCC Sublease at 1-2.

¹ As both RJCC and Railroad Property are Class III railroads, no labor protective conditions were imposed. 49 U.S.C. § 10902(d).

On February 5, 2005,² however, CSXT and RJCC entered into an agreement that directly conveyed the Anchorage Trackage Rights from CSXT to RJCC, bypassing Railroad Property.³ While this transaction resulted in the same outcome contemplated by the Railroad Property and RJCC notices of exemption -- with the Anchorage Trackage Rights held by RJCC -- it collapsed a two-step process for effectuating the transfer of the Anchorage Trackage Rights into a single step. The parties at the time did not recognize the discrepancy between how the transaction was described in the notices of exemption and how the transaction actually occurred.

Since 2005, CSXT and RJCC have amended the Anchorage Trackage Rights several times to expand the commodities that RJCC may handle pursuant to the trackage rights. R.J. Corman Railroad Company/Central Kentucky Lines, LLC -- Trackage Rights Exemption -- CSX Transportation Inc., Finance Docket No. 35124 (STB served April 10, 2008); R.J. Corman Railroad Company/Central Kentucky Lines, LLC -- Trackage Rights Exemption -- CSX Transportation, Inc., Finance Docket No. 35386 (notice of exemption filed June 29, 2010). Those transactions have been handled pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7), and are not implicated by the discrepancy that RJCC seeks to address in this petition to reopen the 2005 proceeding. It was during the course of the most recent transaction, however, that the parties noticed that the 2005 trackage rights agreement, rather than being executed by CSXT and Railroad Property and then assigned by Railroad Property to RJCC as

² This was the date the Water Street Lead lease transaction was consummated. Railroad Property had indicated in its notice of exemption, filed January 26, 2005, that a tentative agreement had been reached with CSXT, and that a final agreement would be executed on or before February 5, 2005.

³ Because the Anchorage Trackage Rights were incidental to the Water Street Lead lease transaction under 49 C.F.R. § 1150.41, et seq., there was no requirement to file the trackage rights agreement with the Board.

contemplated by the 2005 notices of exemption, had in fact been executed directly by CSXT and RJCC. After consultation with Board staff, RJCC and Railroad Property undertook to file this petition to clarify the record as to how RJCC acquired the Anchorage Trackage Rights.

RJCC notes that the Anchorage Trackage Rights qualified as "incidental trackage rights" to RJCC's 2005 Water Street Lead sublease transaction regardless of whether RJCC obtained those rights from Railroad Property or from CSXT. 49 C.F.R. § 1150.41(d) provides that "[i]ncidental trackage rights include the grant of trackage rights by the seller, or the acquisition of trackage rights to operate over the line of a third party, that occurs at the time of the purchase." Here, RJCC acquired the Anchorage Trackage Rights from a third party (CSXT) at the time of RJCC's related sublease of the Water Street Lead from Railroad Property. Cf. Missouri Central -- Acq. & Oper. Exem. -- Lines of UP, 4 S.T.B. 391 (1999), aff'd sub nom. Lee's Summit v. STB, 231 F.3d 39 (D.C. Cir. 2000).

RJCC and Railroad Property also do not believe that the 2005 notices of exemption were misleading or materially false, in that the ultimate transaction presented -- the holding of the Anchorage Trackage Rights by RJCC -- is what occurred. The notices of exemption were both filed under Section 10902 and explicitly indicated that RJCC was to be the operator of the rail lines and trackage rights at issue. No party has been or will be harmed. Whether RJCC's rights were assigned from Railroad Properties or given directly by CSXT, the outcome is what was contemplated by the notices. RJCC and Railroad Property acknowledge that the actual route to that outcome differed from that described in the notices of exemption. RJCC accordingly requests that the Board modify RJCC Sublease to indicate that RJCC acquired the incidental Anchorage Trackage Rights directly from CSXT rather than "by assignment from Railroad Property" See RJCC Sublease at 1. Railroad Property similarly requests that the

Board modify Railroad Property Lease to delete references to Railroad Property's acquisition of the Anchorage Trackage Rights. See Railroad Property Lease at 1-2.

WHEREFORE, RJCC and Railroad Property respectfully request that the Board reopen this proceeding and modify its notices of exemption served herein on February 23, 2005 and March 4, 2005, respectively, to clarify that RJCC holds the Anchorage Trackage Rights pursuant to direct agreement with CSXT rather than via assignment of a CSXT-Railroad Property agreement.

Respectfully submitted,

By: 

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